

I should like to add, in conclusion, having regard to the unsatisfactory state of the law regarding situation of this kind, that I adopt wholeheartedly and with great respect the moral stated by Lord Goddard in *Sachs v. Miklos* above at page 34 as follows:—

"This action appears to be a warning against doing a friendly act. Its moral is: never do anything for anybody when asked without going to solicitors and having a formal agreement drawn up".

The appeal, therefore, succeeds to the extent that the quantum of damages for detention of the furniture is varied from \$525 to \$50.

The cross-appeal succeeds.

Order accordingly.

Solicitors: *Braddell Bros.; Rodyk & Davidson.*

UNITED INVESTMENT AND FINANCE LTD. v. WALKER & ANOR.

[O.C.J. (Winslow J.) July 23, 1966]

[Singapore — Suit No. 1735 of 1963]

Hire purchase — Whether transaction a genuine hire purchase or a money loan disguised under the cloak of a hire purchase — Liability of guarantor.

The first defendant desired to buy a motor cycle and he obtained one from the second defendant, who was a dealer in motor cycles. The second defendant collected a deposit from the first defendant and asked him to complete a proposal form and other documents, which were later forwarded to the plaintiffs in order that they could conclude a hire purchase agreement with the customer, the first defendant, who would thereby become a hirer. No formal agreement in writing was made evidencing a sale from the second defendant to the plaintiffs but evidence was given by the managing director of the plaintiffs that there was an arrangement between his company and the second defendant whereby if any customer wished to buy a motor cycle on hire purchase the second defendant would sell the motor cycle to the plaintiffs and the plaintiffs would let it on hire purchase terms to the customer. The first defendant having defaulted the plaintiffs sued the second defendant, who were the guarantors.

Held: the transaction in this case was a hire purchase of the motor cycle by the plaintiffs to the first defendant and therefore the second defendant was liable as guarantor.

Cases referred to:—

- (1) *United Investment and Finance Ltd. v. Abdul Rahman & Anor.* [1966] 2 M.L.J. 9.
- (2) *Transport and General Credit Corporation Ltd. v. Morgan* [1939] 1 Ch. 531.

CIVIL SUIT.

S. Santhiran for the plaintiffs.

John Pillai for the second defendant.

Cur. Adv. Vult.

Winslow J.: The plaintiffs' claim in this action is similar to a claim they made in *United Investment & Finance Ltd. v. Abdul Rahman &*

A *Anor.*⁽¹⁾ against the same second defendant who was the guarantor of a hirer under a hire-purchase agreement with the plaintiffs in respect of a motor-cycle. The hirer in the present case was one R. W. Walker. In *Abdul Rahman's* case I decided on the evidence before me to dismiss the plaintiffs' claim on the ground that the hire-purchase agreement in question was merely a device to provide financial accommodation in the form of a money loan disguised under the cloak of a hire-purchase agreement and that the plaintiffs were not, in fact, the owners of the motor-cycle at the time when the agreement was concluded. The evidence, moreover, showed that the second defendant sold the motor-cycle in question to a person who subsequently negotiated the hire-purchase agreement with the plaintiffs. In that case too an initial deposit was paid to the second defendant and credit for this was given to the hirer in the hire-purchase agreement.

D In three-cornered transactions of this kind (i.e. as between a financier such as the plaintiffs, a dealer such as the second defendant and a hirer such as R. W. Walker in this case) it is the recognised practice in commercial circles for the dealer to complete a proposal form after a customer has selected the goods he desires to acquire — in this case a motor-cycle — to collect a deposit from the customer which he retains and then to forward the proposal form together with a number of other documents duly signed by the customer to the financier in order that the financier can conclude a hire-purchase agreement with the customer who would thereby become a hirer. It is usual in these cases to have a separate agreement of some kind or a document evidencing the fact that a sale of the goods had taken place as between the dealer and the financier so as to vest the property in the goods in the financier before it becomes the subject-matter of a hire-purchase agreement.

G In the case before me all the requirements followed by the commercial community in matters of hire-purchase have been followed save that there is no formal agreement in writing evidencing a sale from the dealer to the financier. It would appear from *Goode on Hire-Purchase Law and Practice* at page 376 that the sale to the financier is usually subject to the provisions of a master agreement between the financier and the dealer regulating the business connection between them. It does not seem that such an agreement is essential though it would seem to be highly desirable. It is a separate contract from the hire-purchase agreement and regulates the business relationship between dealer and financier at its inception. In the present case Mr. James Lim Hock Guan, the managing director of the plaintiffs in 1962 when the company was formed, gave evidence to the effect that at the commencement of business of the

plaintiffs there was an arrangement between the plaintiffs and the second defendant, who was the managing partner of Universal Service Agency, sole agents for Triumph motor-cycles, that if any customer wished to buy a motor-cycle from his agency on hire-purchase agreement the agency would sell the motor-cycle to the plaintiffs and the plaintiffs would let it out on hire-purchase terms to the customer. No such evidence was given by James Lim in *Abdul Rahman's* case. I have, therefore, material in this case on which I can come to a different conclusion from that which I reached in that suit. I see no reason for rejecting the evidence of Mr. James Lim on this point.

Although the second defendant claims that he was not acting as agent for the plaintiffs in this transaction the fact remains that he was in a position of trust *vis-a-vis* the plaintiffs of which firm he was a founder-director. Mr. James Lim was not challenged on his evidence about such a prior arrangement at the commencement of the plaintiffs' business. Walker in the proposal form also declared that he understood that the plaintiffs would be purchasing the motor-cycle from the second defendant. I do not think that he would have signed such a declaration if he had regarded himself as the owner. In all the circumstances, therefore, despite the second defendant's assertion that he did not sell the motor-cycle to the plaintiffs and that he had sold it to Walker who had made part-payment and become part-owner of the motor-cycle, I am satisfied, on a balance of probabilities, that the arrangement to which Mr. James Lim referred did, in fact, exist and that the agreement was that the plaintiffs in all such transactions were to become owners. As the second defendant himself admitted it was not the intention at the time that the property in the motor-cycle should pass to Walker. It follows that this was not merely a loan of money to Walker by the plaintiffs masquerading as a genuine hire-purchase agreement but, in fact, a transaction such as those recognised as a mercantile service mentioned by Simonds J. in *Transport & General Credit Corporation Ltd. v. Morgan* ⁽²⁾ where he says —

"It must be remembered that hire-purchase agreements now take a very large part in the commercial and social life of the community, and the financing of them is an enormous business in the City of London and elsewhere. It appears to me that the financiers and the dealers co-operate in the common venture of making the whole business of hire-purchase agreement, which is now, for good or for evil, a necessary part of our social life, feasible, and to regard one party to that common venture, which is now a recognized mercantile service, as carrying on the business of a moneylender is an abuse of language".

Walker who appears on the writ as the first defendant was not served with the writ as he had been repatriated to England and accordingly was not a party to the proceedings. It remains

A for me to consider whether the claim should succeed against the second defendant as Walker's guarantor.

B Counsel for the second defendant stressed there had been a variation of the guarantee in that the plaintiffs had allowed the second defendant to collect instalments contrary to the terms of the hire-purchase agreement and that thereby the guarantee was avoided. It should be noted, however, that the guarantee signed by the second defendant contains a provision that the plaintiffs' rights under the guarantee shall not be prejudiced by any variation in any of the terms of the said agreement.

C In the circumstances judgment will be entered for the plaintiffs with costs.

[After hearing further argument costs both here and in the court below were fixed at \$500 in favour of the respondents.]

D *Judgment for the plaintiffs.*

Solicitors: J. Tan Chor-Yong & Co.; Pillai & Co.

UNITED INVESTMENT AND FINANCE LTD. v. TEE CHIN YONG & ORS.

E

[O.C.J. (Chua J.) July 27, 1966]

[Singapore — Consolidated Suits Nos. 804, 945 and 946 of 1964]

Companies — Meeting — Whether one director can constitute quorum for meeting — Forfeiture of shares.

F *Costs — Proceedings instituted by managing director without authority of directors — Dismissal of action.*

G The plaintiffs claimed payment of the balances due from the defendants to the company for shares in the company upon forfeiture of their shares. The resolution to forfeit the shares and to institute proceedings was taken at a general meeting of the company attended only by two members of whom only one had paid up his shares. The meeting was an adjourned meeting and under article 35 of the company at this adjourned meeting "the members present should be a quorum".

Held: (1) the meeting of the company could not be constituted by one member and therefore there was no quorum at the meeting held by the company in this case and the resolution purported to be passed was invalid;

H (2) as the actions were brought without authority, they must be struck out.

Cases referred to:—

- (1) *East v. Bennett Brothers Ltd.* [1911] 1 Ch. 163.
- (2) *Sharp v. Dawes* (1876), 2 Q.B.D. 26.
- (3) *Re Sanitary Carbon Co.* [1877] W.N. 223.
- (4) *Harris v. The North Devon Railway Co.* 52 E.R. 651.
- (5) *Daimler v. Continental Tyre and Rubber Co.* [1916] 2 A.C. 307.
- (6) *John Shaw & Sons (Salford) Ltd. v. Peter Shaw and John Shaw* [1935] 2 K.B. 113.

CONSOLIDATED SUITS.

S. H. Elias (J. Tan Chor-Yong with him)